

94TH CONGRESS
1ST SESSION

S. 5

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 10, 1975

Referred to the Committee on Government Operations

AN ACT

To provide that meetings of Government agencies shall be open to the public, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.—This Act may be cited as
4 the “Government in the Sunshine Act.”

5 SEC. 2. DECLARATION OF POLICY.—It is hereby de-
6 clared to be the policy of the United States that the public
7 is entitled to the fullest practicable information regarding
8 the decisionmaking processes of the Federal Government.
9 It is the purpose of this Act to provide the public with such
10 information, while protecting the rights of individuals and
11 the ability of the Government to carry out its responsibilities.

1 SEC. 3. DEFINITIONS.—For purposes of this Act the
2 term “person” includes an individual, partnership, cor-
3 poration, association, or public or private organization other
4 than an agency.

5 SEC. 4. (a) This section applies, according to the pro-
6 visions thereof, to the Federal Election Commission and to
7 any agency, as defined in section 551 (1) of title 5, United
8 States Code, where the collegial body comprising the agency
9 consists of two or more individual members, at least a major-
10 ity of whom are appointed to such position by the President
11 with the advice and consent of the Senate. Except as provided
12 in subsection (b), all meetings of such collegial body, or of
13 a subdivision thereof authorized to take action on behalf of
14 the agency, shall be open to the public. For purposes of this
15 section, a meeting means the deliberations of at least the
16 number of individual agency members required to take action
17 on behalf of the agency where such deliberations concern the
18 joint conduct or disposition of official agency business.

19 (b) Except where the agency finds that the public in-
20 terest requires otherwise, (1) subsection (a) shall not apply
21 to any agency meeting, or any portion of an agency meeting,
22 or to any meeting, or any portion of a meeting, of a sub-
23 division thereof authorized to take action on behalf of the
24 agency, and, (2) the requirements of subsections (c) and
25 (d) shall not apply to any information pertaining to such

1 meeting otherwise required by this section to be disclosed to
2 the public, where the agency, or the subdivision thereof con-
3 ducting the meeting, properly determines that such portion
4 or portions of its meeting, or such information, can be reason-
5 ably expected to—

6 (1) disclose matters (A) specifically authorized
7 under criteria established by an Executive order to be
8 kept secret in the interests of national defense or foreign
9 policy and (B) are in fact properly classified pursuant
10 to such Executive order;

11 (2) relate solely to the agency's own internal
12 personnel rules and practices;

13 (3) disclose information of a personal nature
14 where disclosure would constitute a clearly unwarranted
15 invasion of personal privacy;

16 (4) involve accusing any person of a crime, or
17 formally censuring any person;

18 (5) disclose information contained in investigatory
19 records compiled for law enforcement purposes, but
20 only to the extent that the disclosure would (A) inter-
21 fere with enforcement proceedings, (B) deprive a
22 person of a right to a fair trial or an impartial ad-
23 judication, (C) constitute an unwarranted invasion of
24 personal privacy, (D) disclose the identity of a con-
25 fidential source, (E) in the case of a record compiled

1 by a criminal law enforcement authority in the course
2 of a criminal investigation, or by an agency conducting
3 a lawful national security intelligence investigation, dis-
4 close confidential information furnished only by the con-
5 fidential source, (F) disclose investigative techniques
6 and procedures, or (G) endanger the life or physical
7 safety of law enforcement personnel;

8 (6) disclose trade secrets, or financial or com-
9 mercial information obtained from any person, where
10 such trade secrets or other information could not be ob-
11 tained by the agency without a pledge of confidentiality,
12 or where such information must be withheld from the
13 public in order to prevent substantial injury to the com-
14 petitive position of the person to whom such information
15 relates;

16 (7) disclose information which must be withheld
17 from the public in order to avoid premature disclosure of
18 an action or a proposed action by—

19 (A) an agency which regulates currencies, se-
20 curities, commodities, or financial institutions where
21 such disclosure would (i) lead to significant finan-
22 cial speculation in currencies, securities, or commod-
23 ities, or (ii) significantly endanger the stability
24 of any financial institution;

25 (B) any agency where such disclosure would

1 significantly frustrate implementation of the pro-
2 posed agency action, or private action contingent
3 thereon; or

4 (C) any agency relating to the purchase by
5 such agency of real property.

6 This paragraph shall not apply in any instance where
7 the agency has already disclosed to the public the con-
8 tent or nature of its proposed action, or where the agency
9 is required by law to make such disclosure on its own
10 initiative prior to taking final agency action on such
11 proposal;

12 (8) disclose information contained in or related to
13 examination, operating, or condition reports prepared by,
14 on behalf of, or for the use of an agency responsible
15 for the regulation or supervision of financial institutions;

16 (9) specifically concern the agency's participation
17 in a civil action in Federal or State court, or the initia-
18 tion, conduct, or disposition by the agency of a particular
19 case of formal agency adjudication pursuant to the proce-
20 dures in section 554 of title 5, United States Code, or
21 otherwise involving a determination on the record after
22 opportunity for a hearing; or

23 (10) disclose information required to be withheld
24 from the public by any other statute establishing par-

1 ticular criteria or referring to particular types of
2 information.

3 (c) (1) Action under subsection (b) shall be taken only
4 when a majority of the entire membership of the agency, or
5 of the subdivision thereof authorized to conduct the meeting
6 on behalf of the agency, votes to take such action. A separate
7 vote of the agency members, or the members of a subdivision
8 thereof, shall be taken with respect to each agency meeting a
9 portion or portions of which are proposed to be closed to the
10 public pursuant to subsection (b), or with respect to any
11 information which is proposed to be withheld under subsec-
12 tion (b). A single vote may be taken with respect to a series
13 of meetings, a portion or portions of which are proposed to
14 be closed to the public, or with respect to any information
15 concerning such series of meetings, so long as each meeting in
16 such series involves the same particular matters, and is
17 scheduled to be held no more than thirty days after the initial
18 meeting in such series. The vote of each agency member par-
19 ticipating in such vote shall be recorded and no proxies shall
20 be allowed. Whenever any person whose interests may be
21 directly affected by a meeting requests that the agency close
22 a portion or portions of the meeting to the public for any of
23 the reasons referred to in paragraphs (3), (4), or (5) of
24 subsection (b), the agency shall vote whether to close such
25 meeting, upon request of any one of its members. Within one

1 day of any vote taken pursuant to this paragraph, the agency
2 shall make publicly available a written copy of such vote.

3 (2) If a meeting or portion thereof is closed to the
4 public, the agency shall, within one day of the vote taken
5 pursuant to paragraph (1) of this subsection, make publicly
6 available a full written explanation of its action closing the
7 meeting, or portion thereof, together with a list of all persons
8 expected to attend the meeting, and their affiliation.

9 (3) Any agency, a majority of whose meetings will
10 properly be closed to the public, in whole or in part, pursuant
11 to paragraphs (6), (7) (A), (8), or (9) of subsection (b),
12 or any combination thereof, may provide by regulation for
13 the closing of such meetings, or portion of such meetings, so
14 long as a majority of the members of the agency, or of the
15 subdivision thereof conducting the meeting, votes at the be-
16 ginning of such meeting, or portion thereof, to close the meet-
17 ing, and a copy of such vote is made available to the public.
18 The provisions of this subsection, and subsection (d), shall
19 not apply to any meeting to which such regulations apply:
20 *Provided*, That the agency shall, except to the extent that the
21 provisions of subsection (b) may apply, provide the public
22 with public announcement of the date, place, and subject mat-
23 ter of the meeting at the earliest practicable opportunity.
24 (d) In the case of each meeting, the agency shall make
25 public announcement, at least one week before the meeting,

1 of the date, place, and subject matter of the meeting, whether
2 open or closed to the public, and the name and phone number
3 of the official designated by the agency to respond to requests
4 for information about the meeting. Such announcement shall
5 be made unless a majority of the members of the agency,
6 or of the members of the subdivision thereof conducting the
7 meeting, determines by a vote that agency business requires
8 that such meetings be called at an earlier date, in which case
9 the agency shall make public announcement of the date,
10 place, and subject matter of such meeting, and whether open
11 or closed to the public, at the earliest practicable opportunity.
12 The subject matter of a meeting, or the determination of the
13 agency to open or close a meeting, or portion of a meeting,
14 to the public, may be changed following the public announce-
15 ment required by this paragraph if, (1) a majority of the
16 entire membership of the agency, or of the subdivision
17 thereof conducting the meeting, determines by a vote that
18 agency business so requires, and that no earlier announce-
19 ment of the change was possible, and, (2) the agency pub-
20 licly announces such change at the earliest practicable oppor-
21 tunity. Immediately following the public announcement re-
22 quired by this paragraph, notice of such announcement shall
23 also be submitted for publication in the Federal Register.

24 (e) A complete transcript or electronic recording ade-
25 quate to fully record the proceedings shall be made of each

1 meeting, or portion of a meeting, closed to the public, ex-
2 cept for a meeting, or portion of a meeting, closed to the
3 public pursuant to paragraph (9) of subsection (b). The
4 agency shall make promptly available to the public, in a place
5 easily accessible to the public, the complete transcript or elec-
6 tronic recording of the discussion at such meeting of any
7 item on the agenda, or of the testimony of any witness re-
8 ceived at such meeting, where no significant portion of such
9 discussion or testimony contains any information specified
10 in paragraphs (1) through (10) of subsection (b). Copies
11 of such transcript, or a transcription of such electronic re-
12 cording disclosing the identity of each speaker, shall be fur-
13 nished to any person at the actual cost of duplication or
14 transcription. The agency shall maintain a complete ver-
15 batim copy of the transcript, or a complete electronic record-
16 ing of each meeting, or portion of a meeting, closed to the
17 public, for a period of at least two years after such meeting,
18 or until one year after the conclusion of any agency pro-
19 ceeding with respect to which the meeting, or a portion
20 thereof, was held, whichever occurs later.

21 (f) Each agency subject to the requirements of this sec-
22 tion shall, within one hundred and eighty days after the en-
23 actment of this Act, following consultation with the Office of
24 the Chairman of the Administrative Conference of the United
25 States and published notice in the Federal Register of at least

1 thirty days and opportunity for written comment by any
2 persons, promulgate regulations to implement the require-
3 ments of subsections (a) through (e) of this section. Any
4 person may bring a proceeding in the United States Dis-
5 trict Court for the District of Columbia to require an agency
6 to promulgate such regulations if such agency has not pro-
7 mulgated such regulations within the time period specified
8 herein. Any person may bring a proceeding in the United
9 States Court of Appeals for the District of Columbia to set
10 aside agency regulations issued pursuant to this subsection
11 that are not in accord with the requirements of subsections
12 (a) through (e) of this section, and to require the promulga-
13 tion of regulations that are in accord with such subsections.

14 (g) The district courts of the United States have juris-
15 diction to enforce the requirements of subsections (a) through
16 (e) of this section by declaratory judgment, injunctive relief,
17 or other relief as may be appropriate. Such actions may be
18 brought by any person against an agency or its members
19 prior to, or within sixty days after, the meeting out of which
20 the violation of this section arises, except that if public an-
21 nouncement of such meeting is not initially provided by the
22 agency in accordance with the requirements of this section,
23 such action may be instituted pursuant to this section at any
24 time prior to sixty days after any public announcement of
25 such meeting. Before bringing such action, the plaintiff

1 shall first notify the agency of his intent to do so, and allow
2 the agency a reasonable period of time, not to exceed ten
3 days, to correct any violation of this section, except that
4 such reasonable period of time shall not be held to exceed
5 two working days where notification of such violation is
6 made prior to a meeting which the agency has voted to close.
7 Such actions may be brought in the district wherein the
8 plaintiff resides, or has his principal place of business, or
9 where the agency in question has its headquarters. In such
10 actions a defendant shall serve his answer within twenty days
11 after the service of the complaint. The burden is on the
12 defendant to sustain his action. In deciding such cases the
13 court may examine in camera any portion of a transcript or
14 electronic recording of a meeting closed to the public, and
15 may take such additional evidence as it deems necessary. The
16 court, having due regard for orderly administration and the
17 public interest, as well as the interests of the party, may
18 grant such equitable relief as it deems appropriate, includ-
19 ing granting an injunction against future violations of this
20 section, or ordering the agency to make available to the public
21 the transcript or electronic recording of any portion of a
22 meeting improperly closed to the public. Except to the extent
23 provided in subsection (h) of this section, nothing in this sec-
24 tion confers jurisdiction on any district court to set aside
25 or invalidate any agency action taken or discussed at an

1 agency meeting out of which the violation of this section
2 arose.

3 (h) Any Federal court otherwise authorized by law to
4 review agency action may, at the application of any person
5 properly participating in the proceeding pursuant to other
6 applicable law, inquire into violations by the agency of the
7 requirements of this section, and afford any such relief as it
8 deems appropriate.

9 (i) The court may assess against any party reason-
10 able attorney fees and other litigation costs reasonably in-
11 curred by any other party who substantially prevails in any
12 action brought in accordance with the provisions of sub-
13 section (f), (g), or (h) of this section. Costs may be
14 assessed against an individual member of an agency only in
15 the case where the court finds such agency member has
16 intentionally and repeatedly violated this section, or against
17 the plaintiff where the court finds that the suit was initiated
18 by the plaintiff for frivolous or dilatory purposes. In the
19 case of apportionment of costs against an agency, the costs
20 may be assessed by the court against the United States.

21 (j) The agencies subject to the requirements of this
22 section shall annually report to Congress regarding their
23 compliance with such requirements, including a tabulation
24 of the total number of agency meetings open to the public,
25 the total number of meetings closed to the public, the rea-

1 sons for closing such meetings, and a description of any
2 litigation brought against the agency under this section.

3 SEC. 5. (a) Section 557 of title 5, United States Code,
4 is amended by adding at the end thereof the following new
5 subsection:

6 “(d) In any agency proceeding which is subject to sub-
7 section (a) of this section, except to the extent required for
8 the disposition of ex parte matters as authorized by law—

9 “(1) no interested person outside the agency shall
10 make or knowingly cause to be made to any member of
11 the body comprising the agency, administrative law
12 judge, or other employee who is or may reasonably be
13 expected to be involved in the decisional process of the
14 proceeding, an ex parte communication relevant to the
15 merits of the proceeding;

16 “(2) no member of the body comprising the agency,
17 administrative law judge, or other employee who is or
18 may reasonably be expected to be involved in the deci-
19 sional process of the proceeding, shall make or know-
20 ingly cause to be made to an interested person outside the
21 agency an ex parte communication relevant to the merits
22 of the proceeding;

23 “(3) a member of the body comprising the agency,
24 administrative law judge, or other employee who is or
25 may reasonably be expected to be involved in the deci-

1 sional process of such proceeding who receives, or who
2 makes, a communication in violation of this subsection,
3 shall place on the public record of the proceeding:

4 “(A) written communications transmitted in
5 violation of this subsection;

6 “(B) memorandums stating the substance of all
7 oral communications occurring in violation of this
8 subsection; and

9 “(C) responses to the materials described in
10 subparagraphs (A) and (B) of this subsection;

11 “(4) upon receipt of a communication knowingly
12 made by a party, or which was knowingly caused to be
13 made by a party in violation of this subsection; the
14 agency, administrative law judge, or other employee
15 presiding at the hearing may, to the extent consistent
16 with the interests of justice and the policy of the under-
17 lying statutes, require the person or party to show cause
18 why his claim or interest in the proceeding should not
19 be dismissed, denied, disregarded, or otherwise adversely
20 affected by virtue of such violation;

21 “(5) the prohibitions of this subsection shall apply
22 at such time as the agency may designate, but in no case
23 shall they apply later than the time at which a proceed-
24 ing is noticed for hearing unless the person responsible
25 for the communication has knowledge that it will be

1 noticed, in which case the prohibitions shall apply at the
2 time of his acquisition of such knowledge.”.

3 (b) Section 551 of title 5, United States Code, is
4 amended—

5 (1) by striking out “and” at the end of paragraph
6 (12) ;

7 (2) by striking out the “act.” at the end of para-
8 graph (13) and inserting in lieu thereof “act; and”

9 (3) by adding at the end thereof the following new
10 paragraph:

11 “(14) ‘ex parte communication’ means an oral or
12 written communication not on the public record with
13 respect to which reasonable prior notice to all parties is
14 not given.”.

15 (c) Section 556 (d) of title 5, United States Code, is
16 amended by inserting between the third and fourth sentences
17 thereof the following new sentence: “The agency may, to the
18 extent consistent with the interests of justice and the policy
19 of the underlying statutes administered by the agency, con-
20 sider a violation of section 557 (d) of this title sufficient
21 grounds for a decision adverse to a party who has knowingly
22 committed such violation or knowingly caused such violation
23 to occur.”.

24 SEC. 6. (a) Except as specifically provided by section
25 4, nothing in section 4 confers any additional rights on

1 any person, or limits the present rights of any such person,
2 to inspect or copy, under section 552 of title 5, United
3 States Code, any documents or other written material
4 within the possession of any agency. In the case of any
5 request made pursuant to section 552 of title 5, United
6 States Code, to copy or inspect the transcripts or electronic
7 recordings described in section 4 (e); the provisions of this
8 Act shall govern whether such transcripts or electronic re-
9 cordings shall be made available in accordance with such
10 request. The requirements of chapter 33 of title 44, United
11 States Code, shall not apply to the transcripts and electronic
12 recordings described in section 4 (e). This Act does not
13 authorize any information to be withheld from Congress.

14 (b) Nothing in section 4 authorizes any agency to
15 withhold from any individual any record, including tran-
16 scripts or electronic recordings required by this Act, which
17 is otherwise accessible to that individual under section 552a
18 of title 5, United States Code.

19 SEC. 7. The provisions of this Act shall become effec-
20 tive one hundred and eighty days after the date on which

1 this Act is enacted, except that the provisions of section 4
2 requiring the issuance of regulations to implement such sec-
3 tion shall become effective upon enactment.

Passed the Senate November 6, 1975.

Attest: FRANCIS R. VALEO,
Secretary.

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